

July 26, 2001

07-27-01A10:19 RCVD

Hon. Rosemary F. Center
General Counsel
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

CONFIDENTIAL
via Facsimile & U.S. Mail

Re: Request for Advisory Opinion under KRS 121.135

Dear Ms. Center:

I am assisting Brereton C. Jones in a legal analysis of certain Kentucky election laws. Mr. Jones is contemplating becoming a candidate for Governor in the 2003 election. Since the law provides that an exploratory committee cannot be established until "the year before the year in which a slate of candidates for Governor and Lt. Governor shall be elected" (KRS 121A.015(1)), we are unclear as to what laws and regulations, if any, should govern Mr. Jones' activities in this pre-exploratory committee period (i.e., between now and January, 2002).

During the time he served as Lt. Governor and Governor, and during the campaigns for both offices, Mr. Jones developed a network of friends around the Commonwealth and deepened his personal interest in public policy. Mr. Jones has traveled the state to meet with friends, public officials, business leaders, interest groups and concerned citizens. He keeps in touch with his political friends in an effort to stay up to date on policy issues and political developments as well as to help him make a considered decision regarding his entry into the 2003 gubernatorial campaign. Mr. Jones has not authorized anyone to accept contributions or to make expenditures on his behalf, or on behalf of his potential candidacy and he has made no formal announcement of his candidacy.

As part of this process, it is likely that Mr. Jones will incur travel expenses which he will pay personally. Additionally, he will likely car pool with friends and supporters to certain political events, receive meals and refreshments from friends and receive volunteer assistance (from individuals acting on their own initiative) with travel arrangements, scheduling and research. Furthermore, Mr. Jones' personal assistant, who is an employee of Airdrie Stud (Mr. Jones' business) may provide incidental assistance to him in the planning of his travel itinerary and his daily office schedule. Other than routine travel expenditures, Mr. Jones expects to make no significant expenditures in the

July 26, 2001
Page 2

course of his efforts to gauge his political support and decide on his future candidacy: he will not conduct any polling or public opinion research, hire any consultant or campaign staff, or purchase or produce any advertising or media in connection with his potential candidacy. Mr. Jones' expenditures will be incurred as part of his personal efforts to better inform himself about the issues and the people who have an interest in public and political issues confronting Kentucky. Whether or not he runs for public office again, Mr. Jones plans to stay involved in civic issues.

I have reviewed the relevant statutes and regulations, portions of which Mr. Jones signed into law in 1992 when he was Governor. Mr. Jones is very familiar with the intent of these laws. It is his desire to keep his conduct within both the letter and the spirit of these laws. However, my review of the law has turned up little in the way of guidance for potential candidates during the period of time prior to formation of an exploratory committee.

Specifically, I submit the following questions:

1. What laws and regulations, if any, govern Mr. Jones' pre-exploratory committee political activities, in terms of travel, evaluation of his potential candidacy, and volunteer activities of friends and supporters?
2. Under any of the circumstances described above (e.g., (a) unpaid volunteers, acting on their own initiative, assisting in travel, research and meetings or (b) personal payment of Mr. Jones' travel expenses by Mr. Jones), would the Registry classify monetary expenses and unpaid volunteer time related to Mr. Jones' pre-exploratory committee travel and gauging of political support as "contributions" or "expenditures" or "in-kind contributions" under KRS Chapter 121 or 121A? What, if any, remedial actions would apply if the Registry found such activities to constitute "contributions" or "expenditures"?
3. In Case No. 94-520, the Supplemental Staff Report filed March 14, 1995 recognized that there "has been a question about whether a gubernatorial candidate is a candidate prior to becoming a slate..." This report goes on to conclude that if expenditures made by an individual were coordinated with and not independent of such individual's staff (in this report the potential candidate was a public official), then the acts of his staff, while under his direct control and supervision, would be attributable to him and therefore would bring him "within the definition of 'candidate' in KRS 121.015(8) and all applicable campaign finance laws." Since the date of that report, the statute has been amended to provide for the creation of an exploratory committee (1996 Ky. Acts, ch. 155, effective July 15, 1996). In order

July 26, 2001
Page 3

to avoid a chilling effect on protected speech, we believe there must be a bright line in time prior to which a potential candidate can engage in political networking and social/business activities without fear of running afoul of election laws. It appears that the earliest date on which an exploratory committee may be formed (in this case, January 1, 2002) may be that bright line. In view of the specific provisions of the statute that now provide for an exploratory committee (KRS 121A.015), can a potential candidate for governor be classified as a "candidate" under KRS Chapter 121 or 121A prior to either (a) forming an exploratory committee, or (b) forming a slate? If so, then at what point does an individual become a "candidate"?

4. When an individual volunteers to assist Mr. Jones either by arranging meetings with interested individuals or groups, transporting Mr. Jones to events, hosting a party in honor of Mr. Jones, or helping make travel arrangements for Mr. Jones, what actions must Mr. Jones take, if any, in order to verify that the services being provided by such volunteers do not fall within the definition of "contribution", i.e. that such services are truly voluntary as set forth in 32 KAR2:170§1(5)? Is it necessary for Mr. Jones to ask the volunteer if he or she is taking vacation or personal time, works on a commission basis rather than as a salaried employee, is self-employed, etc.?
5. Mr. Jones' primary vocation is raising and breeding thoroughbred horses. As with all businesses, it is to Mr. Jones' benefit to maintain good relations with his clients, potential clients and others in and around his industry. Accordingly, Mr. Jones often holds social and business functions at his home and on his farm (likewise, Mr. Jones is often the guest of others). Such events could include large holiday season open houses, small dinner parties, tours of his farm and hosting guests at local restaurants, charity fundraisers or sporting events. Depending upon the nature of the function, Mr. Jones spends either personal or business funds to cover the costs. At such functions, Mr. Jones' guests often bring up the topic of his potential candidacy for Governor. In fact, it is rare that Mr. Jones can go a day without the topic being raised by someone. At such social/business functions, as a result of spending time with Mr. Jones, people could determine to support Mr. Jones if he formally becomes a candidate. Are there any circumstances in which the amounts Mr. Jones expends hosting business and/or private social events could be classified by the Registry as "campaign expenditures" or could functions at which Mr. Jones is the guest of others (i.e. others have paid for his ticket or

July 26, 2001
Page 4

dinner, etc.) count as "contributions" by such individuals? Are there any limits on how many people Mr. Jones could host or what can and cannot be said by Mr. Jones at such functions?

I look forward to hearing from you. If you have any questions, please do not hesitate to contact me.

Sincerely,

WYATT, TARRANT & COMBS, LLP



Franklin K. Jelsma